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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,234	04/24/2000	Patrick J. O'Donnell	PODON.001A	8230

20995 7590 03/15/2004

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

5

<b>Office Action Summary</b>	<b>Application No.</b> 09/557,234	<b>Applicant(s)</b> O DONNELL, PATRICK J.	
	<b>Examiner</b> Andrea M. Valenti	<b>Art Unit</b> 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-28 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-28 and 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-24, 33, and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 425,603 to Guo in view of Kimbrew-Walter Roses "Jet-All" sprayer.

Regarding Claims 19, 20, and 36, Guo teaches spraying apparatuses for horticulture application providing a hand held spraying apparatus having a handle, an elongated body portion, and a nozzle portion at a distal end of the body portion, the nozzle portion having a longitudinal axis and being adapted to direct water flow outwardly around the circumference of the nozzle axis, the apparatus configured so that moving the handle correspondingly moves the nozzle portion; inherently providing a source of water under pressure; inherently placing the spraying apparatus into communication with the source of water under pressure (Guo Fig. 1).

Guo is silent on a method for removing insects from and cleaning a plant having leaves. However, "Jet-All" teaches using a spraying apparatus by positioning the nozzle adjacent an underside of a plant leaf so that a portion of the water directed by the nozzle impacts the leaf underside and the longitudinal axis of the nozzle is generally horizontally disposed at a first elevation and advancing and retracting the nozzle

generally horizontally so that a flow of water imparts the leaf underside along its length ("Jet-All" brochure). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the apparatus taught by Guo in a method of insect removal taught by "Jet-All" since the modification is merely the application of alternate equivalent spraying apparatuses selected for different cost and ergonomic advantages. The spraying apparatus contains all of the structural limitations of applicant's claim language and therefore has the capability of performing the method steps presented by "Jet-All". The intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Guo as modified inherently teaches rotating the apparatus at least about 90 degrees so that the longitudinal axis of the nozzle is moved to a second elevation but remains generally horizontally disposed during rotation and advancing and retracting the nozzle generally horizontally at the second elevation to efficiently and effectively treat all size plants.

Regarding Claim 21, Guo as modified teaches the nozzle being adapted to direct flow of water in a substantially vertical plane. (Guo Fig. 1).

Regarding Claim 22, Guo as modified by "Jet-All" teaches that at least one of the substantially vertical planes is substantially perpendicular to the nozzle portion and inherently comprising the step of holding the elongated body in a substantially horizontal attitude. ("Jet-All"). It would have been obvious to one of ordinary skill in the art to

modify the teachings of Guo with the spray direction of "Jet-All" for an increase in coverage area.

Regarding Claim 23 and 33, Guo as modified by "Jet-All" teaches that the handle includes a bend point and inherently teaches the step of adjusting the elevation of the body portion by rotating the handle about a proximal end of the handle. (Guo Fig. 1).

Regarding Claim 24, Guo as modified by "Jet-All" inherently discloses advancing and retracting the apparatus into and out of the plant at a plurality of locations, so that water directed by the nozzle simultaneously impacts the top side of a first plant leaf along at least a portion of its length and the underside of a second plant leaf along at least a portion of its length.

Regarding Claim 35, Guo as modified teaches the broadly presented claim language that the elongated body and the nozzle portion being **substantially** straight and having **substantially** the same longitudinal axis. (Guo Fig. 1).

Regarding Claim 37, Guo as modified by "Jet-All" inherently teaches the step of holding the elongated body at a generally horizontal attitude and advancing and retracting the nozzle through the application of the apparatus to a variety of different size plants.

Regarding Claim 38, Guo as modified by "Jet-All" teaches that elongated body is at least 18 inches long (See "Jet-All" flier).

Regarding Claim 39, Guo as modified teaches the handle is bent about 30-60 degrees at the bend point (Guo Fig. 1).

Regarding Claim 40, Guo as modified by "Jet-All" inherently teaches rotating the apparatus about 90 degrees while keeping the longitudinal axis of the nozzle generally horizontally disposed during rotation and advancing and retracting the generally horizontally into and out of the plant a plurality of times while rotating the apparatus.

Claims 25-28 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 425,603 to Guo as applied to claim 19 above, and further in view of U.S. Patent No. 3,737,105 to Arnold.

Regarding Claim 25 and 34, Guo as modified is silent that the nozzle is adapted to create a substantially planar contiguous wall of water around the circumference of the nozzle. However, Arnold teaches a nozzle configured to create a substantially planar contiguous wall of water (Arnold #45). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of an known alternate equivalent spray nozzle selected for the advantage of a wide radial spray for larger surface coverage.

Regarding Claim 26, Guo as modified discloses that the nozzle is adapted to create two or more substantially planar and contiguous walls of water around the circumference of the nozzle, the walls of water being spaced apart from each other (Arnold #45 and 46).

Regarding Claims 27 and 28, Guo as modified by "Jet-All" inherently discloses advancing and retracting the nozzle between leaves of the plant at a plurality of locations, so that the portions of the wall of water simultaneously impact undersides of

leaves generally above the nozzle, top sides of leaves generally below the nozzle, and any matter that may be between the leaves of the plant.

### ***Response to Arguments***

Applicant's arguments filed 1 December 2003 have been fully considered but they are not persuasive.

Regarding applicants claim of commercial success, examiner maintains that the supplied declarations by applicant are not persuasive and fail to establish substantial evidence of commercial success. To establish commercial success the applicant must prove that the success of the device is derived from the actual invention, i.e. the design and effectiveness of the invention. Merely stating that many of the devices have sold with little effort in marketing alone cannot establish commercial success. Applicant could be selling the product at a really reduced price then competing products in the market and success is merely from cost then from the effectiveness of the design.

Regarding applicants arguments establishing a long felt need, the examiner maintains that the supplied declarations are not persuasive and fail to establish sufficient evidence of a long felt need. The declaration must establish a baseline comparison. For instance, the declaration should compare the effectiveness of applicant's product over that of the "Jet-All" device. If no comparison is established then it is unclear what the person giving the declaration is familiar with, e.g. are they comparing it to a simple hose or a random irrigation system. There is not enough evidence of what is being declared is true. Again, the declaration must present

arguments of a more effective design. Thus more evidence is necessary to prove that a long-felt need was not satisfied by another before the invention by applicant.

Regarding the surveys submitted by applicant, it is not clear to the examiner whether the users in the survey are associated with the applicant or if they are an anonymous third party. The Garden Club needs to provide a statement that they are not affiliated with the applicant and they were not paid or did not receive compensation from applicant to conduct the test of the product.

Examiner maintains that it would be an inherent/obvious movement to perform the steps of advancing, retracting, and rotating the device to reach all locations of a plant depending on the plant size and configuration.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Des. 359,547 ; U.S. Patent Des. 353,874 ; and U.S. Patent Des. 270,560.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Examiner  
Art Unit 3643

02 March 2004



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

3/11/04